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OFFICE OF PETITIONS

In re Patent No. 7,073,565	:	
Issue Date: July 11, 2006	:	
Application No. 10/077,391	:	ON PETITION
Filed: February 15, 2002	:	
Patentee(s): Nikolco S. Nikolovski, et. al.	:	

This is a decision on the petition under 37 CFR 1.55(c) filed August 23, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d), for the benefit of priority to foreign Australian Application No. PP8525, filed February 5, 1999, by way of a Certificate of Correction. The delay in responding is regretted.

The petition is **GRANTED**.

This pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6));
- (3) the surcharge as set forth in 37 CFR 1.17(t);

- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require additional information where there is a question whether the delay was unintentional); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.


Intermediate nonprovisional Application No. 09/495,754 was filed within twelve months of Foreign Application No. AU PP8525, which was filed on February 5, 1999, for which priority is claimed. The required petition fee of \$1,370 and the Certificate of Correction fee of \$100 were received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 119(a)-(d) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 119(a)-(d) and 37 CFR 1.55(a)(1) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

This application is being referred to the Certificates of Correction Branch via Technology Center Art Unit 1725, for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Any questions concerning this decision should be directed to Andrea Smith at (571) 272-3226. Any questions concerning the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8305.


 Andrea Smith
 Petitions Examiner
 Office of Petitions